

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY  
GENERAL OF THE STATE OF OKLAHOMA,  
et al.,

Plaintiffs,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 4:05-CV-329-TCK-SAJ

**DEFENDANTS' RESPONSE IN OPPOSITION TO THIRD PARTY  
DEFENDANTS' MOTIONS TO DISMISS AND/OR SEVER AND  
STAY THE THIRD PARTY COMPLAINT**

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), and, by and through their respective attorneys, hereby submit the following global *Response in Opposition* to motions to dismiss and/or sever and stay the Third Party Complaint ("TPC") filed by Third Party Defendants ("TPDs") City of Watts; Kevin R. Kelley and Barbara L. Kelley, individually, and d/b/a Diamond Head Resort; John W. Stacy d/b/a Big John's Exterminating; Floyd Simmons; Billie Howard; Ray Dean Doyle; Donna Doyle; Illinois River Ranch Property Owners Association, Inc.; and City of Tahlequah (collectively, "TPDs' Motions")

**I. ARGUMENT**

1. The aforementioned TPDs have filed motions to dismiss and/or sever and stay the TPC by joining and/or adopting the Plaintiffs' *Motion to Sever and Stay and/or Strike or Dismiss the Claims Asserted in the Third-Party Complaints* ("Plaintiffs' Motion") (Docket No. 247)

and/or the *Motion of the Berry Group of Third-Party Defendants for Dismissal, and Alternatively for Severance and Stay of the Third-Party Complaint of Defendants/Third-Party Plaintiffs, Tyson Foods, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., Simmons Foods, Inc., Georges, Inc., and Willow Brook Foods, Inc.* (Docket No. 588) (the “*Berry Group Motion*”). *See TPDs’ Motions* at Docket Nos. 271, 605, 612, 707, 709, and 732.

2. The *TPDs’ Motions* provide no original argument in support of their requested relief and instead, are merely wholesale adoptions of the *Plaintiffs’ Motion* (Docket No. 247) and/or the *Berry Group Motion* and supporting *Brief* (Docket Nos. 588 and 589, respectively).

3. By Order dated May 31, 2006, Magistrate Judge Sam A. Joyner asked the parties to consider filing pleadings constituting one page “adoptions” of previously filed briefs to reduce duplicate filings and help reduce some of the confusion that has been created in this case due to duplicate filings of the parties. *See* Docket No. 757, n. 1.

4. In response to Magistrate Joyner’s request, and because the *TPDs’ Motions* are premised solely upon the arguments set forth in the *Plaintiffs’ Motion* (Docket No. 247) and/or the *Berry Group Motion* and supporting *Brief* (Docket Nos. 588 and 589, respectively), Defendants hereby submit this global response in opposition to the *TPDs’ Motions* by incorporating, by reference, their respective *Responses* to the *Plaintiffs’ Motion* (Docket No. 495) and to the *Berry Group Motion* (Docket No. 775), the same as if fully set forth herein.

## II. CONCLUSION

For the reasons identified in Defendants’ *Responses to Plaintiffs’ Motion* (Docket No. 495) and to the *Berry Group Motion* (Docket No. 775), this Court should deny the *TPDs’ Motions* (Docket Nos. 271, 605, 612, 707, 709, and 732) as premature, legally deficient, and unsupported by considerations of the relevant equities and efficiencies.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of June, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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